

§ 92.910

country having emission standards which differ from EPA standards.

(c) It is a condition of any exemption for the purpose of export under paragraph (a) of this section, that such exemption is void *ab initio* with respect to a new locomotive or locomotive engine intended solely for export, where such locomotive or locomotive engine is sold, or offered for sale, to an ultimate purchaser or otherwise distributed or introduced into commerce in the United States for purposes other than export.

§ 92.910 Granting of exemptions.

(a) If upon completion of the review of an exemption request made pursuant to § 92.905 or § 92.908, EPA determines it is appropriate to grant such an exemption, a memorandum of exemption is to be prepared and submitted to the person requesting the exemption. The memorandum is to set forth the basis for the exemption, its scope, and such terms and conditions as are deemed necessary. Such terms and conditions generally include, but are not limited to, agreements by the applicant to conduct the exempt activity in the manner described to EPA, create and maintain adequate records accessible to EPA at reasonable times, employ labels for the exempt locomotives or engines setting forth the nature of the exemption, take appropriate measures to assure that the terms of the exemption are met, and advise EPA of the termination of the activity and the ultimate disposition of the locomotives or engines.

(b) Any exemption granted pursuant to paragraph (a) of this section is deemed to cover any subject locomotive or engine only to the extent that the specified terms and conditions are complied with. A breach of any term or condition causes the exemption to be void *ab initio* with respect to any locomotive or engine. Consequently, the causing or the performing of an act prohibited under § 92.1103(a)(1) or (a)(3), other than in strict conformity with all terms and conditions of this exemption, renders the person to whom the exemption is granted, and any other person to whom the provisions of § 92.1103(a) are applicable, liable to suit under sections 204 and 205 of the Act.

40 CFR Ch. I (7–1–07 Edition)

EFFECTIVE DATE NOTE: At 63 FR 19077, Apr. 16, 1998, § 92.910 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 92.911 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403-J, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

§ 92.912 Staged-assembly exemption.

You may ask us to provide a temporary exemption to allow you to complete production of your engines at different facilities, as long as you maintain control of the engines until they are in their certified configuration. We may require you to take specific steps to ensure that such engines are in their certified configuration before reaching the ultimate purchaser. You may request an exemption under this section in your application for certification, or in a separate submission.

[70 FR 40457, July 13, 2005]

Subpart K—Requirements Applicable to Owners and Operators of Locomotives and Locomotive Engines

§ 92.1001 Applicability.

The requirements of this subpart are applicable to railroads and all other owners and operators of locomotives and locomotive engines subject to the provisions of subpart A of this part, except as otherwise specified.

§ 92.1002 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 92.1003 In-use testing program.

(a) *Applicability.* This section applies to all Class I freight railroads, beginning on January 1, 2005.

(b) *Testing requirements.* Each railroad subject to the provisions of this section

shall annually test a sample of locomotives in its fleet. For the purpose of this section, a railroad's fleet includes both the locomotives that it owns and the locomotives that it is leasing.

(1)(i) Except as specified in paragraphs (b)(1) (ii) and (iii) of this section, the number of locomotives to be tested shall be at least 0.15 percent of the average number of locomotives in the railroad's fleet during the previous calendar year (i.e., the number tested shall be 0.0015 multiplied by the number of locomotives in the fleet, rounded up to the next whole number).

(ii) After December 31, 2015, the number of locomotives to be tested by railroads with 500 or more locomotives shall be at least 0.10 percent of the average number of locomotives in the railroad's fleet during the previous calendar year (i.e., the number tested shall be 0.0010 multiplied by the number of locomotives in the fleet, rounded up to the next whole number). After December 31, 2015, the number of locomotives to be tested by railroads with fewer than 500 locomotives shall be zero. The provisions of this paragraph (b)(1)(ii) apply only when:

(A) No new locomotive emission standards have taken effect during the previous 5 years;

(B) Locomotive emission controls have not changed fundamentally, during the previous 5 years, in any manner that could reasonably be expected to have the potential to significantly affect emissions durability; and

(C) Testing during the previous 5 years has shown, to the satisfaction of the Administrator, that the degree of noncompliance for tested locomotives is low enough that the higher rate of testing specified in paragraph (b)(1)(i) of this section is not needed.

(iii) The Administrator may allow a railroad to perform a smaller number of tests than specified in paragraphs (b)(1) (i) or (ii) of this section, where he/she determines that the number of tests specified in paragraphs (b)(1)(i) or (ii) of this section is not necessary.

(2) Testing shall be performed according to the test procedures in subpart B of this part, unless otherwise approved by the Administrator.

(c) *Test locomotive selection.* (1)(i) A representative sample of locomotives shall be randomly selected for testing.

(ii) Unless otherwise specified by the Administrator, the selection shall be made by the railroad.

(iii) The railroad shall select locomotives from each manufacturer and remanufacturer, and from each tier level (e.g., Tier 0, Tier 1 and Tier 2) in proportion to their numbers in the railroad's fleet, except where specified or allowed otherwise by the Administrator.

(iv) Locomotives tested during the previous year shall be excluded from the sample.

(v) Locomotives may not be excluded from the sample because of visible smoke, a history of durability problems, or other evidence of malmaintenance.

(2)(i) Locomotives selected for testing according to the provisions of this section shall have been certified in compliance with requirements in subpart A of this part, and shall have been operated for at least 100 percent of their useful lives.

(ii) Where the number of locomotives that have been operated for at least 100 percent of their useful lives is not large enough to fulfill the testing requirement, locomotives still within their useful lives shall be tested. In this case, the locomotives must have been operated longer than at least 80 percent of the locomotives in the railroad's fleet.

(3) Where specified by the Administrator, the railroad shall test specified locomotives in its fleet, including locomotives that do not meet the criteria specified in paragraph (c)(2) of this section.

(d) *Reporting requirements.* All testing done in compliance with the provisions of this section shall be reported to EPA within thirty calendar days of the end of each year. At a minimum, each report shall contain the following:

(1) Full corporate name and address of the railroad providing the report.

(2) For each locomotive tested, the following:

(i) Corporate name of the manufacturer and last remanufacturer(s) (including both certificate holder and installer, where different) of the locomotive, and the corporate name of the manufacturer or last remanufacturer(s) of the engine if different than that of the manufacturer or remanufacturer(s) of the locomotive;

(ii) Year, and if known month of original manufacture of the locomotive and the engine, and the manufacturer's model designation of the locomotive and manufacturer's model designation of the engine, and the locomotive identification number;

(iii) Year, and if known month that the engine last underwent remanufacture, and the engine remanufacturer's designation which either reflects, or most closely reflects, the engine after the last remanufacture, and the engine family identification;

(iv) The number of MW-hrs and miles (where available) the locomotive has been operated since its last remanufacture; and

(v) The emission test results for all measured pollutants.

(e) Any railroad that performed no emission testing during a given year is exempt from the reporting requirements described in paragraph (d) of this section for that year.

(f) In lieu of some or all of the test data required by this section, railroads may submit equivalent emission data collected for other purposes. The Administrator may also allow emission data collected using other testing or sampling procedures to be submitted in lieu of some or part of the data required by this section with advance approval.

(g) All reports submitted to EPA in compliance with the provisions of this subpart must be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division 6403-J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

§ 92.1004 Maintenance and repair.

(a) Unless otherwise approved by the Administrator, all owners of locomotives subject to the provisions of this part shall ensure that all emission-related maintenance is performed

on the locomotives, as specified in the maintenance instructions provided by the certifying manufacturer or remanufacturer in compliance with § 92.211 (or maintenance that is equivalent to the maintenance specified by the certifying manufacturer or remanufacturer in terms of maintaining emissions performance).

(b) Unless otherwise approved by the Administrator, all maintenance and repair of locomotives and locomotive engines subject to the provisions of this part performed by any owner, operator or other maintenance provider, including maintenance that is not covered by paragraph (a) of this section, shall be performed, using good engineering judgement, in such a manner that the locomotive or locomotive engine continues (after the maintenance or repair) to the meet the emission standards or family emission limits (as applicable) it was certified as meeting prior to the need for maintenance or repair.

(c) The owner of the locomotive shall maintain records of all maintenance and repair that could reasonably affect the emission performance of any locomotive or locomotive engine subject to the provision of this part.

§ 92.1005 In-use locomotives.

(a)(1) Any Class I railroad subject to the provisions of this subpart shall supply to the Administrator, upon request, in-use locomotives, selected by the Administrator. The number of locomotives which the Administrator requests under this paragraph (a)(1) shall not exceed five locomotives per railroad per calendar year. These locomotives or engines shall be supplied for testing at such reasonable time and place and for such reasonable periods as the Administrator may require. The Administrator shall make reasonable allowances to the railroad to schedule the supply of locomotives for testing in such a manner that it minimizes disruption of its operational schedule.

(2) Any non-Class I railroad or other entity subject to the provisions of this subpart shall supply to the Administrator, upon request, in-use locomotives, selected by the Administrator. The number of locomotives which the Administrator requests